

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT LYNCHBURG, VA
FILED
JUN 23 2005
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UNITED STATES OF AMERICA,

v.

GEORGE DESHAWN MOORE,

Defendant.

CRIMINAL CASE No. 4:03-CR-70123

ORDER AND OPINION

JUDGE NORMAN K. MOON

The Court has before it Defendant George Deshawn Moore's Motion to Dismiss Count II of the Superseding Indictment, filed June 8, 2005. Defendant argues that Count II of the superseding indictment, which was filed on June 2, 2005, should be dismissed because it charges him with committing two separate offenses, and is therefore duplicitous and unconstitutional.

Count II of the Superseding Indictment charges that Defendant "did knowing use and carry a firearm during and in relation to, *and* did possess a firearm in furtherance of, a drug trafficking crime," in violation of 18 U.S.C. § 924(c) (emphasis added). Section 924(c) criminalizes two separate and distinct forms of misconduct—a "use" offense and a "possession" offense. *See, e.g., United States v. Pleasant*, 125 F. Supp. 2d 173, 176 (E.D. Va. 2000) ("the words of § 924(c) delineate two quite different, albeit related, proscriptions. In so doing, the statute defines two different crimes."); *United States v. Combs*, 369 F.3d 925, 933 (6th Cir. 2004) ("we confirm here that 18 U.S.C. § 924(c) criminalizes two separate and distinct offenses."). Therefore, Count II of the superseding indictment is duplicitous because it charges

Defendant with two separate crimes under § 924(c)—the first is using and carrying a firearm during and in relation to a drug trafficking crime, and the second is possessing a firearm in furtherance of a drug trafficking crime. The proper remedy for duplicity of an indictment is to dismiss the count or to require the United States to elect which offense it desires to pursue. *Pleasant*, 125 F. Supp. 2d at 176.

For the reasons stated above, the Court ORDERS the United States to elect which § 924(c) offense it wishes to pursue in Count II of the Superseding Indictment. The United States shall file an indictment that conforms with the requirements of this Order by Monday, June 27.

The Clerk of the Court is directed to send a certified copy of this Order to all counsel of record.

ENTERED:

Dawn Elman

U.S. District Judge

June 23, 2005

Date